IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.732 of 2006
Date of Decision: 17.12.2007

Hira Lal and others .....Petitioners

Vs.

State of Haryana and others ...Respondents

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CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

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Present : Mr.J.V. Yadav, Advocate for the petitioners.
Mr.Ashish Kapoor, Addl.A.G. Haryana for respondents no.1 and 3.
Mr. A.S. Rohilla, Advocate for HUDA.

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RAJIVE BHALLA, J

The petitioners pray for the issuance of a writ in the nature of Certiorari, quashing the notifications dated 27.1.2003 and 23.1.2004 issued under Sections 4 and 6 of the Land Acquisition Act (hereinafter referred to as `the Act').

The State of Haryana, issued a notification under Section 4 of the Act, proposing to acquire land for residential and commercial purposes for Sectors 18, 19, 20-Part, Commercial Sector 17(Part) at Rewari.

The petitioners are owners in possession of land comprised in Rectangle No.3//17, 18, 19, 20, 21/1, 21/2; 4//2, 7//22.23/1, 8//1.10. Kittas 11, total measuring 8 kanals 10 marlas situated in the revenue estate of village Pandaniyawas, Tehsil and Distt.Rewari. Petitioner No.1 is owner in possession to the extent of 170/1130 shares (1422 sq.yards) and is also in possession of ancestral house comprising of 11 rooms. Petitioners No.2 to

6 are owners to the extent of 160/1130 shares each and have constructed their houses. They filed objections Annexures P-2 to P-7, under Section 5-A of the Act, praying for release of their houses. However, these objections were dismissed, whereafter the State of Haryana, issued a declaration under Section 6 of the Act dated 23.1.2004.

Counsel for the petitioners submits that the existence of their houses, prior to the issuance of the notification under Section 4, is not denied. The fact that the petitioners reside in these houses is evidenced by House Tax Receipts, pertaining to petitioners no.1 to 3, Annexure P-9 and petitioners no.4 to 6 Annexures P-10 to P-12. The ration card of petitioners no.1 and 2 is annexed as Annexure P-13 and of petitioners no.3 to 6 as Annexures P-14 to P-17. The petitioners are paying electricity charges, evidenced by copies of electricity bills Annexures P-24 to P-28. Further evidence indicating that the petitioners are residing in the aforementioned premises are the voter identity cards of petitioners no.2 and 4 to 6 Annexures P-29 to P-32. It is argued that as the State of Haryana, has framed a policy, whereunder it is obliged to release construction raised, prior to the issuance of notification under Section 4 of the Act, the refusal by the Government, to release the petitioners houses, is arbitrary and discriminatory. It is, therefore, prayed that a direction be issued to the State of Haryana, to release the petitioners houses from acquisition.

Counsel for the State of Haryana submits that the petitioners prayer for release has been considered. The houses belonging to petitioners no.2 and 3 have been released, whereas houses belonging to petitioners no.1, 4 and 6 could not be released, as they fall within the alignment of a proposed road. As regards petitioner no.5, his land could not be released, as

it is vacant and integral to the public purpose, sought to be achieved by the impugned notification. It is, therefore, submitted that as the petitioners prayer for release of their houses was considered in accordance with the policy, the present petition be dismissed.

We have heard learned counsel for the parties and perused the paper book.

The solitary plea pressed into service by counsel for the petitioners is that the Government is obliged to release the petitioners houses in accordance with the policy of release framed by the State of Haryana.

We express our inability to accept the aforementioned contention. Release of land, subject to acquisition falls within the policy making domain of the Government, being a matter of policy and not of law. At this stage,it would be relevant to reproduce an extract from a judgement of the Hon'ble Supreme Court,namely; ***Anand Buttons Ltd. v. State of Haryana,(2005) 9 SCC 164 .***

> **13.** It is trite law that not only land but also structures on land can be acquired under the Act. As to whether in a given set of circumstances certain land should be exempted from acquisition only for the reason that some construction had been carried out, is a matter of policy, and not of law. If after considering all the circumstances, the State Government has taken the view that exemption of the lands of the appellants would render askew the development scheme of the industrial estate, it is not possible for the High Court or this Court to interfere with

> the satisfaction of the authorities concerned. We see no ground on which the appellants could have maintained that their lands should be exempted from acquisition. Even if three of the parties had been wrongly exempted from acquisition, that gives no right to the appellants to seek similar relief."

It is true that the State of Haryana has framed a policy that enables it, but does not oblige it, to release land bearing structures. This policy is, however, subject to certain significant caveats, namely; the structure must exist before the issuance of the notification under Section 4 of the Act. The structure after release must be capable of adjustment with the planning and must not be integral to the public purpose sought to be achieved. The petitioners prayer for release was considered under the policy. Houses constructed by petitioners no.2 and 3 have been released alongwith proportionate vacant area. However, houses belonging to petitioners no.1,4 and 6 could not be released, as they fall within the alignment of a proposed road. As regards petitioner no.5, the land could not be released, as it was vacant.

We find no reason legal or factual to interfere with the discretion exercised by the State, in refusing to release the houses of petitioners no.1, 4, 5 and 6. The petitioners have failed to assert an unreasonable or arbitrary exercise of power on the part of the Government. The State may in the exercise of its powers under the Land Acquisition Act, acquire land, whether constructed or vacant. The refusal of the Government to release land does not vest right with the unsuccessful petitioners to pray for a mandate directing the State to release their land/houses.

In view of what has been stated herein above, the present petition is dismissed, with no order as to costs.

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release On the basis of the aforementioned facts, counsel for the petitioners contends that the impugned notifications are arbitrary, discriminatory, a colorable exercise of power. The petitioners residential houses are in existence since prior to the issuance of notification under Section 4 and in case a proper survey had been conducted, their houses would have been released It is further submitted that the public purpose disclosed in the notification, includes use of land for residential purpose. The petitioners have already constructed their houses, which could easily be adjusted in the scheme.

It is further submitted that the State of Haryana, has framed a policy, wherein houses constructed prior to the issuance of notification under Section 4 are to be released. It is, therefore, prayed that the present writ petition be allowed and the impugned notifications be quashed.

Counsel for the State of Haryana, submits that the houses constructed by the petitioners no.2 and 3, alongwith proportionate vacant land has been released. As regards petitioner no.5, the land owned is vacant and, therefore, has not been released. As regards petitioners no.1, 4 and 6, it is submitted that the houses/land falls within the alignment of proposed roads and as it could not be adjusted within the planning, this land could not be released.

As regards the objections, filed under Section 5-A, it is submitted that Sh.Jai Singh, petitioner no.2, appeared before the Land Acquisition Collector, on behalf of all the petitioners. The objections were considered and decided, as per the provisions of the Act. Sh.Jai Singh's statement was recorded and he was heard at length. The Land Acquisition Collector, after considering the entirety of the houses, rejected the

objections. A joint Site Plan Inspection Committee also submitted its report, which led to the issuance of declaration. It is further submitted that the award was pronounced on 20.1.2006 and as the process of acquisition has been completed subject to the out come of the present writ petition, the present writ petition be dismissed.

Another argument put forth by counsel for the State of Haryana is that the fight to acquire land, whether vacant or constructed, is an absolute right and the Act does not draw any distinction between vacant or constructed land. The policy issued by the State of Haryana, enables the Government to release houses in existence, prior to the notification issued under Section 4 of the Act. However, this policy is subject to the land being capable of adjustment or where the land is not necessary for development. In the present case, the land of petitioners no.2 and 3 has been released. The land of petitioners no.1,4 and 6 could not be adjusted, as it falls in the alignment of a road. The land of petitioner no.5 could not be considered for acquisition. It is, therefore, prayed that as the impugned notifications are legal and valid, the present writ petition be dismissed.

We have heard learned counsel for the parties and perused the paper book.

An appraisal of the arguments addressed by counsel for the petitioners discloses that the primary assertion is a prayer that as the acquired land contains houses, a direction be issued to the State, asking them to release the petitioners houses. As averred in the reply and as also asserted by counsel for the State of Haryana, the construction raised by the petitioners had not been denied. It is, however, submitted that the constructed portion of petitioners no.2 and 3 alongwith proportionate vacant

land has already been released. The land of petitioner no.5 could not be released, as it was vacant on the date of the issuance of notification under Section 4 of the Act. The construction raised by petitioners no.1,4 and 6 could not be released, as it could not be adjusted in the planning, namely that it falls in the alignment of a road. Consequently, it appears that the Government, after due consideration of the entirety of the circumstances, namely; the houses existed on the land, the nature of the acquired land, the planning and the lay out of the proposed development, arrived at a conclusion that land and houses of petitioners no.1,4 and 6 could not be released. We find no error in the refusal of the Government, to release the land belonging to these petitioners. Though, the State of Haryana has framed a policy that requires it to release houses in existence, prior to the issuance of a notification under Section 4 of the Act, this policy is, however, subject to a caveat namely; that release would not be ordered, where the constructed area cannot be adjusted or is integral to the planning and the infrastructure. The petitioners cases fall within the exception to the policy and, therefore, were not released.

The Land Acquisition Act, does not draw any distinction between vacant or constructed land. The State draws its powers to acquire land from the provisions of the Land Acquisition Act, which confers powers upon the Government to acquire any land, whether constructed or vacant. Thus, the mere fact that the house or houses are sought to be acquired, in our considered opinion, cannot be the sole ground to impugn proceedings for acquisition. As no other point arises for consideration, the present writ petition is dismissed with no order as to costs.